

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HECTOR G. CONTRERAS and U.S. POSTAL SERVICE,
POST OFFICE, Jersey City, N.J.

*Docket No. 96-1683; Submitted on the Record;
Issued June 8, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
A. PETER KANJORSKI

The issue is whether appellant has more than a 15 percent permanent impairment of his right upper extremity for which he received a schedule award.

On October 27, 1992 appellant, then a 47-year-old casual clerk, injured his hand while in the performance of duty.

On February 3, 1995 the Office of Workers' Compensation Programs accepted appellant's claim for partial rupture of his right third finger.

In a November 14, 1994 letter, Dr. David Weiss, an osteopath, advised that appellant had a 45 percent permanent impairment of the right upper extremity secondary to the employment injury. He performed range of motion tests which revealed extension flexion of the long finger at (-)20-90/90 degrees involving the metacarpophalangeal joint, extension flexion 0-100/100 degrees with pain involving the proximal interphalangeal joint, extension flexion 10-20/35 degrees involving the distal interphalangeal joint. Dr. Weiss noted a 10 degree contracture deformity of the distal interphalangeal joint of the long finger. Grip strength testing performed with the Jamar hand dynamometer revealed 22 kilograms (kg) of force strength in the right hand versus 30 kg of force strength in the left hand. He then stated that, based on the American Medical Association, *Guides to the Evaluation of Permanent* (4th ed. 1993), appellant had a 10 percent permanent impairment based on extension deficit of the 3rd right finger, metacarpophalangeal joint, 15 percent permanent impairment for extension flexion deficit of the 3rd right finger of the distal interphalangeal joint, and 20 percent permanent impairment for grip strength loss of the right hand. Dr. Weiss then added appellant's percentage impairments and concluded that his total permanent impairment of the right upper extremity was 45 percent.

By letter dated February 3, 1995, the Office requested that Dr. Weiss provide a permanent partial impairment rating of appellant's right upper extremity, utilizing the A.M.A., *Guides* (4th ed. 1993).¹

On April 4, 1995 appellant resubmitted Dr. Weiss' medical report.

On April 14, 1995 the Office medical adviser, utilizing the calculations as reported by Dr. Weiss, determined that appellant had a 14 percent permanent impairment of the right upper extremity.

On May 9, 1995 the Office granted appellant a schedule award for a 14 percent permanent impairment of the right upper extremity for the period November 14, 1994 to September 15, 1995, for a total of 43.68 weeks of compensation.

On May 11, 1995 appellant, through counsel, requested an oral hearing.

Prior to the hearing, the case was referred to the National Office medical section for review. In a September 5, 1995 report, Dr. Thompson stated that he used the calculations as provided by Dr. Weiss and evaluated appellant's right upper extremity loss consistent with the A.M.A., *Guides* and determined that appellant exhibited a 10 percent loss of flexion of the metacarpophalangeal joint,² a 0 percent loss of flexion of the proximal interphalangeal joint,³ and a 28 percent loss of flexion of the distal interphalangeal joint.⁴ Using the combined values chart Dr. Thompson determined that appellant had a 35 percent permanent impairment to the right long finger.⁵ Using Table 1, relationship of impairment of the digits to impairment of the hand, a 35 percent permanent impairment of the long finger rates a 7 percent permanent impairment of the hand.⁶ Using Table 2, relationship of impairment of the hand to impairment of the upper extremity, a 7 percent permanent impairment of the hand rates 6 percent permanent impairment of the upper extremity.⁷ Using Table 34, upper extremity impairment for loss of strength, Dr. Thompson stated that appellant had a 26 percent strength loss index which equals a 10 percent permanent impairment of the upper extremity.⁸ Using the combined values chart, the

¹ *James A. Sellers*, 43 ECAB 924 (1992).

² A.M.A., *Guides* 34, figure 23.

³ *Id.*, 33, figure 21.

⁴ *Id.*, 32, figure 19.

⁵ *Id.*, 322.

⁶ *Id.*, 18, Table 1.

⁷ *Id.*, 19, Table 2.

⁸ *Id.*, 65, Table 34. Dr. Weiss calculated appellant's loss of right arm strength to be 22 kg. When subtracted from appellant's normal left hand strength, 30kg, and then divided by the normal strength, the strength loss index is 26 percent.

doctor combined a 10 percent permanent impairment with a 6 percent permanent impairment to find a 15 percent permanent of the right upper extremity.⁹

A hearing was held on October 15, 1995 and, in a decision issued and finalized on January 19, 1996, the hearing representative modified the Office's May 9, 1995 decision to award appellant a 15 percent permanent impairment of the right upper extremity. The hearing representative stated that there was no conflict in medical evidence in this case, but that appellant's treating physician, Dr. Weiss, failed to explain how he reached his conclusion that appellant had a 45 percent permanent impairment of the right upper extremity even though he stated that he had relied on the A.M.A., *Guides* in his calculations. He also noted that the Office medical adviser and Dr. Thompson from the National Office explained in detail how they arrived at their impairment ratings.

By letter dated February 12, 1996, the Office granted appellant an additional 1 percent permanent loss of use of his right arm based on the hearing representative's decision dated January 19, 1996 and added 3.12 weeks of compensation to appellant's April 14, 1995 award.

The Board finds that appellant has a 15 percent permanent impairment of the right arm.

Under section 8107 of the Federal Employees' Compensation Act¹⁰ and section 10.304 of the implementing federal regulations,¹¹ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.¹²

In concluding that appellant had a 15 percent impairment, the National Office medical adviser reviewed Dr. Weiss' report, together with the other medical evidence of record, and assigned a percentage of impairment pursuant to the A.M.A., *Guides*, to the findings reported by Dr. Weiss. The Board finds that the evidence of record establishes that appellant had no more than a 15 percent impairment of the right arm and affirms the Office's February 12, 1996 award which increased appellant's award an additional 1 percent to 15 percent for permanent loss of use of his right arm.

⁹ *Id.*, 322.

¹⁰ 5 U.S.C. § 8107.

¹¹ 20 C.F.R. § 10.304.

¹² See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

The decision of the Office of Workers' Compensation Programs dated February 12, 1996 is affirmed.

Dated, Washington, D.C.
June 8, 1998

George E. Rivers
Member

David S. Gerson
Member

A. Peter Kanjorski
Alternate Member